

MEMORANDUM

Department of the City Attorney



To: Honorable Mayor and City Council

From: Steven T. Mattas, City Attorney
By: Richard D. Pio Roda, Assistant City Attorney

Subject: Comparison of Open Government Ordinance Provisions

Date: February 4, 2005

This chart provides an updated summary of specific changes to the City's current Open Government and Disclosure of Interests of Public Officials Ordinance (Milpitas Municipal Code §I-310-1.10 et seq.) by the proposed Open Government Ordinance, which is scheduled for consideration at the February 15, 2005 Council meeting.

- **Purpose:**

Current Ordinance:	Proposed Ordinance:
<ul style="list-style-type: none">- Recognizes right of the people to know what their government is doing. (I-310-1.10)	<ul style="list-style-type: none">- Recognizes rights of citizens to open government and assures transparency, public trust and legitimacy. (NEW I-310-1.10)- Forms Open Government Commission (NEW I-310-4.10)

- **Conflicts of Interest Disclosure:**

Current Ordinance:	Proposed Ordinance:
<ul style="list-style-type: none">- At the beginning of each City Council meeting, City Attorney asks Mayor and each member of the Council to disclose any financial or personal conflict with any item on the agenda. If the Mayor or Councilmember has such a conflict, it must be identified in detail sufficient to be understood by the public; the member shall recuse him or herself from taking any action on the item and shall leave the meeting room. (I-310-4.10)	<ul style="list-style-type: none">- Incorporates exact language of current ordinance. (NEW I-310-2.180)

- **Conflict of Interest Forms:**

Current Ordinance: <ul style="list-style-type: none"> - Requires the City Attorney to annually review all Form 700s; all Forms must be scanned into the City's official website no later than the 15th of each year. (I-310-5.10) 	Proposed Ordinance: <ul style="list-style-type: none"> - Repeals the current ordinance. (NEW I-310-4.70)
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- **Attendance, Voting Records and Monthly City Calendars as Public Records:**

Current Ordinance: <ul style="list-style-type: none"> - Requires City Clerk compile and record City Council and Planning Commission attendance and voting records. Copies available in both hard copy and City's official website. - Requires Councilmembers maintain monthly City Calendar forms which include all City-related appointments, meetings, public events speaking engagements, meetings with developers, consultants, lobbyists, regional meetings, subcommittees and task forces. - Descriptions of meetings include the meetings' durations, and listing of all principal individuals present at meetings - Submit updated calendar to City Clerk the first week of every month - Public official's schedule is a public record subject to inspection available in electronic format on the City's website. (I-310-6.10) 	Proposed Ordinance: <ul style="list-style-type: none"> - Repeals voting record and attendance requirement. (NEW I-310.4.70) - Changes the information requirements of Councilmember's calendar reporting duty to be the time and place of each meeting or event attended, excluding personal or social events at which no city business is discussed. The ordinance does not exclude personal or social meetings and events that take place at City Offices, or at offices or residences of people who do substantial business or are otherwise financially affected by the City's actions. - For other meetings, the calendar must include a general statement of issues discussed and persons in attendance. - Also requires that the calendar be available to any requester three business days after the calendar entry date. (NEW I-310-3.170)
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- **Use of Available Technologies to Facilitate Open Government:**

Current Ordinance: <ul style="list-style-type: none"> - City shall develop procedures using available software to redact personal, privileged or confidential information on financial campaign forms. - Redacted forms must be available to the public for inspection during normal business hours and on the City's website. (I-310-7.10) 	Proposed Ordinance: <p>City policy to use technology to promote public access to records. Also requires City department websites with links to public documents concerning its activities. Requires websites be updated at least weekly. Commits City to webcast its City Council and Planning Commission meetings. (NEW I-310-3.40, 3.150)</p>
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- **Restrictions and Prohibitions on Certain Activities of Current and Former Elected and Appointed Officials:**

<p>Current Ordinance:</p> <ul style="list-style-type: none"> - Mayor and City Council prohibited from using their City experience or contacts to assist any applicant through a City permitting process. - During term of office, Mayor and City Council are prohibited from serving in a volunteer capacity as Fire Aides, Senior Police Volunteers, Police Reserves, or with City's park and recreation or public works services. (I-310-8.10) 	<p>Proposed Ordinance:</p> <ul style="list-style-type: none"> - Mayor and City Council prohibited from using their City experience or contacts to assist any applicant through a City permitting process. Supplements Chapter 300, "Regulations of Certain Activities of Former City Officials" (NEW I-310-3.200)
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- **Regulations Governing Lobbyists and Contacts with Elected Officials:**

<p>Current Ordinance:</p> <ul style="list-style-type: none"> - Lobbyist means a person or business entity that receives \$250 or more in a calendar year for communicating with City officials or employees to influence current or future city legislation, administrative decisions, City Council elections or local initiatives. - Councilmembers who have retained lobbyist, or political consultant must register this fact, and lobbyist's contact information. Such information is a public record. - No lobbying without registering with the City Clerk. City may institute a fee. Violation is infraction. - Lobbyists shall file a report with the City Clerk specifying general nature of issues they are trying to influence, compensation received, campaign contributions to elected officials, all fundraising activities, all contributions to political campaigns or charities at the behest of an elected City official, all payments received for services as a consultant to the City or Redevelopment Agency, and any work performed as a campaign consultant for any elected City official. (I-310-9.10) 	<p>Proposed Ordinance:</p> <ul style="list-style-type: none"> - Uses same definition as current ordinance. - Lobbyists must file a report with City Clerk specifying: 1) General nature of issues they are trying to influence, 2) compensation ranges from clients, 3) all campaign contributions to elected city officials, 4) all fundraising activities on behalf of elected City officials, 5) all contributions to political campaigns or charities made at the behest of city officials, 6) all payments received for services as a consultant to the City or Agency, and 7) any compensated work performed as a campaign consultant for any elected City official. <ul style="list-style-type: none"> - City may institute a registration fee, established by the Open Government Commission. - No person who qualifies as a lobbyist shall contact any elected official of the City or make payments to influence local legislative or administrative action without first registering and complying with the disclosure requirements. - Regulates lobbyists working on behalf of the City (NEW I-310-3.160)
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- **Retention and Inspection of Closed Session Minutes:**

Current Ordinance: <ul style="list-style-type: none"> - City Attorney prepares and maintains summary minutes of all closed sessions. - Summary minutes includes list of persons present for each separate closed session agenda item. - Retained for two years and are subject to inspection by any person who was in attendance at the specific agenda item discussed in closed session. (I-310-10.10) 	Proposed Ordinance: <ul style="list-style-type: none"> - All closed sessions of any policy body must be either audio or video recorded in their entirety, and retained for at least 10 years, or permanently if technologically feasible. - Closed session recordings must be made available when all rationales for having the closed session become inapplicable. Closed session recordings related to anticipated litigation must be released two years after the meeting if no litigation is initiated or upon expiration of the statute of limitations if no litigation is filed or if the matter is settled or concluded. (NEW I-310-2.70)
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- **Distribution of Reports and Requests to City Council Members:**

Current Ordinance: <ul style="list-style-type: none"> - City Manager shall prepare and distribute weekly report of City affairs for distribution to Council. The report is a public record subject to inspection at the City Clerk's office. - All City Council requests of staff shall be sent through the City Manager. The Mayor and all City Councilmembers shall be notified of City Council requests and shall receive a copy of all reports distributed. - All citizen and business correspondence regarding City complaints sent to the Mayor or City Council shall be copied and distributed to all members of the Council and Mayor. (I-310-10.11) 	Proposed Ordinance: <ul style="list-style-type: none"> - Repeals all sections and provisions of the ordinance. (NEW I-310-4.70)
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- The proposed Open Government Ordinance also adds a number of provisions not contained in the current ordinance. They are listed in the chart below and referenced to the applicable section of the proposed Open Government Ordinance for your convenience.

	Proposed Ordinance: * <u>Regarding Public Access to Meetings</u> <ul style="list-style-type: none"> - Definition of and Regulation of Meetings (NEW I-310-2.10, 2.20) - Agenda and Public Notice Requirements of Meetings (NEW I-310-2.30, 2.40) - Additional Agenda Disclosures re: Closed Sessions (NEW I-310-2.60, 2.70) - Agendas and related materials of items and matters anticipated for discussion
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	<p>or consideration at a public meeting are public records and subject to distribution at the meeting. (NEW I-310-2.80)</p> <ul style="list-style-type: none"> - Declares permitted Closed session topics (NEW I-310-2.90) - Statement of reason for closed session (NEW I-310-2.100) - Additional disclosure of closed session discussions and actions (NEW I-310-2.110) - Tape recordings, filming and still photography by public. (NEW I-310-2.130) - Regulation of public testimony and council announcements (NEW I-310-2.140) - Minutes (NEW I-310-2.150) - Constitutional Rights during Public Comment (NEW I-310-2.160) - Role of City Attorney (NEW I-310-2.170) <p>* <u>Regarding Public Information and Public Records</u></p> <ul style="list-style-type: none"> - Process for gaining access to public records; Administrative Appeal process through the Open Government Commission (NEW I-310-3.20) - Release of Oral Public Information (NEW I-310-3.50) - Public Review file maintained by City Clerk (NEW I-310-3.60) - Public Information that must be disclosed (NEW I-310-3.70) - Response time to requests for public records (NEW I-310-3.80) - Redaction of information must be kept to a minimum (NEW I-310-3.90) - Justification for withholding of records must be in writing (NEW I-310-3.100) - Fees for duplication of records (NEW I-310-3.120) - City Clerk must maintain index of records (NEW I-310-3.130) - Records survive transition of personnel (NEW I-310-3.140) - Current Chapter 310, incorporated into proposed ordinance as, "PUBLIC RECORDS THAT MUST BE DISCLOSED" (NEW I-310-3.110) <p>* <u>Correspondence and Records Retention Policy of Mayor, City Council and City Manager (NEW I-310-3.180)</u></p> <ul style="list-style-type: none"> - The Mayor, Council and City Manager must maintain and archive documents and correspondence that pertain or are within the subject matter jurisdiction of their duties, and disclose such records according to the proposed ordinance. - Includes email, which must be easily retrievable. <p>* <u>Solicitation of Donations by elected officials (NEW I-310-3.190)</u></p> <p>* <u>Open Government Commission (NEW I-310-4.10)</u></p> <ul style="list-style-type: none"> - Consists of five (5) members appointed by the City Council. - Commission shall have an assigned attorney from City Attorney's Office. - The term of each Commission member shall be two years. - City Manager shall coordinate and implement Open Government Commission. - All employees required to sign an affidavit of financial interest shall also sign an annual affidavit or declaration stating they have read the Open Government Ordinance and have attended annual training. - Annual training shall be provided by the City Attorney's Office. - Willful failure shall be official misconduct.
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